



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

Paper No.

FOLEY & LARDNER LLP  
777 EAST WISCONSIN AVENUE  
MILWAUKEE WI 53202-5306

**COPY MAILED**

**SEP 15 2008**

In re Application of :  
Heroux et al. :  
pplication No. 09/976,437 : LETTER REGARDING  
Filed: October 15, 2001 : PATENT TERM ADJUSTMENT  
Atty Docket No. 090900-0156 :

This letter is in response to the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT," filed March 14, 2008. Applicants request that the initial determination of patent term adjustment under 35 USC 154(b) be recalculated. The request is treated as a request pursuant to applicant's duty of good faith and candor to the Office.

The request for review of patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) at the time of the mailing of the Notice of Allowance is 60 days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On January 18, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 USC 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is one hundred twenty (120) days. The instant request for review of patent term adjustment was timely filed.<sup>1</sup>

The Office initially determined a patent term adjustment of one hundred twenty (120) days based on an adjustment for PTO delay

---

<sup>1</sup> PALM Records indicate that the issue fee was paid on March 14, 2008.

The Office initially determined a patent term adjustment of nine hundred sixty-nine (969) days based on an adjustment for PTO delay of one thousand one hundred thirteen (1113) days, pursuant to 35 USC 154(b) and 37 CFR 1.703(a)(1). This was reduced by the following periods of applicant delay pursuant to 37 CFR 1.704(b): by three (3) days, for the filing of an amendment in response to a non-final Office action on December 30, 2005, three (3) months and three (3) days after the mailing of the non-final Office action on September 27, 2005; by four (4) days, for the filing of an amendment in response to a non-final Office action on October 10, 2006, three (3) months and four (4) days after the mailing of the non-final Office action on July 6, 2006; by 85 days, for the filing of a request for continued examination (RCE) on June 11, 2007, three (3) months and 85 days after the mailing of a final Office action on December 18, 2006; by 34 days, for the filing of a response to the non-final Office action on November 1, 2007, three (3) months and 34 days after the mailing of the non-final Office action on June 28, 2007, and by 18 days, for the filing of a supplemental amendment on November 19, 2007, or 18 days after the filing of an amendment on November 1, 2007.

Applicants are correct. The RCE was filed on June 18, 2007, not June 11, 2007. 37 CFR 1.704(b) states, in pertinent part that:

An applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed.

Accordingly, ninety-two (92) days of applicant delay should have been assessed, rather than 85 days, for filing of an RCE on June

18, 2007, or three months and 92 days after the mailing of the final Office action mailed December 18, 2006.

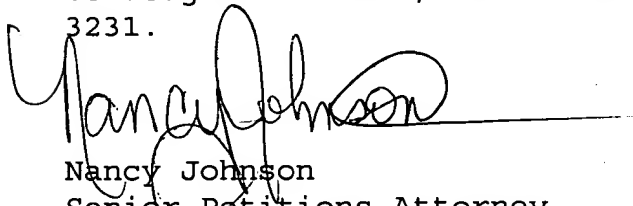
Further, a review of the record reveals that applicants should have been assessed four (4) days of reduction in patent term adjustment for the filing of an RCE on June 19, 2006, or three months and 4 days after the mailing of the final Office action mailed on March 15, 2006.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is nine hundred fifty-eight (958) days (1113 days of PTO delay, reduced by 155 (3+4+4+92+34+18) days of Applicant delay).

As this letter was submitted as an advisement to the Office of an error in applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The Office of Data Management has been advised of this decision. The application is thereby forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and if applicable, for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Revised PALM Calculation

## PTA Calculations for Application: 09/750668

|                          |            |                         |      |
|--------------------------|------------|-------------------------|------|
| Application Filing Date: | 12/29/2000 | PTO Delay (PTO):        | 1113 |
| Issue Date of Patent:    |            | Three Years:            | 0    |
| Pre-Issue Petitions:     | 0          | Applicant Delay (APPL): | 144  |
| Post-Issue Petitions:    | 0          | Total PTA (days):       | 958  |
| PTO Delay Adjustment:    | -11        |                         |      |

## File Contents History

| Number | Date       | Contents Description                                    | PTO | APPL | START |
|--------|------------|---|-----|------|-------|
| 90     | 09/08/2008 | ADJUSTMENT OF PTA CALCULATION BY PTO                    |     | 4    |       |
| 89     | 09/08/2008 | ADJUSTMENT OF PTA CALCULATION BY PTO                    |     | 92   |       |
| 88     | 09/08/2008 | ADJUSTMENT OF PTA CALCULATION BY PTO                    | 85  |      |       |
| 75     | 02/01/2008 | MAIL NOTICE OF ALLOWANCE                                |     |      |       |
| 74     | 01/31/2008 | ISSUE REVISION COMPLETED                                |     |      |       |
| 73     | 01/31/2008 | DOCUMENT VERIFICATION                                   |     |      |       |
| 72     | 01/30/2008 | NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED         |     |      |       |
| 71     | 01/30/2008 | NOTICE OF ALLOWABILITY                                  |     |      |       |
| 70     | 11/25/2007 | DATE FORWARDED TO EXAMINER                              |     |      |       |
| 69     | 11/19/2007 | SUPPLEMENTAL RESPONSE                                   |     | 18   | 66    |
| 68     | 10/31/2007 | MISCELLANEOUS INCOMING LETTER                           |     |      |       |
| 67     | 11/16/2007 | DATE FORWARDED TO EXAMINER                              |     |      |       |
| 66     | 11/01/2007 | RESPONSE AFTER NON-FINAL ACTION                         |     | 34   | 63    |
| 65     | 11/01/2007 | REQUEST FOR EXTENSION OF TIME - GRANTED                 |     |      |       |
| 64     | 10/31/2007 | WORKFLOW - REQUEST FOR RCE - BEGIN                      |     |      |       |
| 63     | 06/28/2007 | MAIL NON-FINAL REJECTION                                |     |      |       |
| 62     | 06/22/2007 | NON-FINAL REJECTION                                     |     |      |       |
| 61     | 06/21/2007 | DATE FORWARDED TO EXAMINER                              |     |      |       |
| 60     | 06/11/2007 | AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE      |     |      |       |
| 59     | 06/21/2007 | DATE FORWARDED TO EXAMINER                              |     |      |       |
| 58     | 06/11/2007 | REQUEST FOR CONTINUED EXAMINATION (RCE)                 |     | 85   | 51    |
| 57     | 06/21/2007 | DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA) |     |      |       |
| 56     | 06/10/2007 | REQUEST FOR EXTENSION OF TIME - GRANTED                 |     |      |       |

|    |            |   |  |   |    |
|----|------------|---|--|---|----|
|    |            |   |  |   |    |
| 55 | 03/06/2007 | MAIL ADVISORY ACTION (PTOL - 303)                       |  |   |    |
| 54 | 03/05/2007 | ADVISORY ACTION (PTOL-303)                              |  |   |    |
| 53 | 03/02/2007 | DATE FORWARDED TO EXAMINER                              |  |   |    |
| 52 | 02/23/2007 | AMENDMENT AFTER FINAL REJECTION                         |  |   |    |
| 51 | 12/18/2006 | MAIL FINAL REJECTION (PTOL - 326)                       |  |   |    |
| 50 | 12/15/2006 | FINAL REJECTION   |  |   |    |
| 49 | 10/18/2006 | DATE FORWARDED TO EXAMINER                              |  |   |    |
| 48 | 10/10/2006 | RESPONSE AFTER NON-FINAL ACTION                         |  | 4 | 47 |
| 47 | 07/06/2006 | MAIL NON-FINAL REJECTION                                |  |   |    |
| 46 | 06/30/2006 | NON-FINAL REJECTION                                     |  |   |    |
| 45 | 06/28/2006 | DATE FORWARDED TO EXAMINER                              |  |   |    |
| 44 | 06/19/2006 | AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE      |  |   |    |
| 43 | 06/28/2006 | DATE FORWARDED TO EXAMINER                              |  |   |    |
| 42 | 06/19/2006 | REQUEST FOR CONTINUED EXAMINATION (RCE)                 |  |   |    |
| 41 | 06/28/2006 | DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA) |  |   |    |
| 40 | 06/19/2006 | WORKFLOW - REQUEST FOR RCE - BEGIN                      |  |   |    |
| 39 | 03/21/2006 | CASE DOCKETED TO EXAMINER IN GAU                        |  |   |    |
| 38 | 03/15/2006 | MAIL FINAL REJECTION (PTOL - 326)                       |  |   |    |
| 37 | 03/14/2006 | FINAL REJECTION   |  |   |    |
| 36 | 01/13/2004 | INFORMATION DISCLOSURE STATEMENT CONSIDERED             |  |   |    |
| 35 | 09/29/2003 | INFORMATION DISCLOSURE STATEMENT CONSIDERED             |  |   |    |
| 34 | 07/05/2001 | INFORMATION DISCLOSURE STATEMENT CONSIDERED             |  |   |    |
| 33 | 01/12/2006 | DATE FORWARDED TO EXAMINER                              |  |   |    |
| 32 | 12/30/2005 | RESPONSE AFTER NON-FINAL ACTION                         |  | 3 | 30 |
| 31 | 10/12/2005 | CASE DOCKETED TO EXAMINER IN GAU                        |  |   |    |
| 30 | 09/27/2005 | MAIL NON-FINAL REJECTION                                |  |   |    |
| 29 | 09/27/2005 | NON-FINAL REJECTION                                     |  |   |    |
| 28 | 09/20/2005 | DATE FORWARDED TO EXAMINER                              |  |   |    |
| 27 | 09/14/2005 | RESPONSE TO ELECTION / RESTRICTION FILED                |  |   |    |
| 26 | 08/10/2005 | MAIL SUPPLEMENTAL RESTRICTION / ELECTION REQUIREMENT    |  |   |    |
| 25 | 08/10/2005 | MAIL EXAMINER INTERVIEW SUMMARY (PTOL                   |  |   |    |

|      |            |   |      |  |    |
|------|------------|---|------|--|----|
|      |            | - 413)  |      |  |    |
| 24   | 08/05/2005 | EXAMINER INTERVIEW SUMMARY RECORD<br>(PTOL - 413)               |      |  |    |
| 23   | 08/08/2005 | SUPPLEMENTAL RESTRICTION  |      |  |    |
| 22   | 03/17/2005 | MAIL RESTRICTION REQUIREMENT                                    | 1113 |  | -1 |
| 21   | 03/15/2005 | REQUIREMENT FOR RESTRICTION / ELECTION                          |      |  |    |
| 20   | 02/25/2005 | CASE DOCKETED TO EXAMINER IN GAU                                |      |  |    |
| 19   | 02/04/2005 | IFW TSS PROCESSING BY TECH CENTER<br>COMPLETE                   |      |  |    |
| 18   | 01/13/2004 | REFERENCE CAPTURE ON IDS  |      |  |    |
| 17   | 09/29/2003 | REFERENCE CAPTURE ON IDS  |      |  |    |
| 16   | 07/05/2001 | REFERENCE CAPTURE ON IDS  |      |  |    |
| 15   | 12/30/2004 | CASE DOCKETED TO EXAMINER IN GAU                                |      |  |    |
| 14   | 03/12/2004 | CASE DOCKETED TO EXAMINER IN GAU                                |      |  |    |
| 13.7 | 01/13/2004 | INFORMATION DISCLOSURE STATEMENT (IDS)<br>FILED                 |      |  |    |
| 13   | 01/13/2004 | INFORMATION DISCLOSURE STATEMENT (IDS)<br>FILED                 |      |  |    |
| 12.7 | 09/29/2003 | INFORMATION DISCLOSURE STATEMENT (IDS)<br>FILED                 |      |  |    |
| 12   | 09/29/2003 | INFORMATION DISCLOSURE STATEMENT (IDS)<br>FILED                 |      |  |    |
| 11   | 03/09/2002 | CASE DOCKETED TO EXAMINER IN GAU                                |      |  |    |
| 10.7 | 07/05/2001 | INFORMATION DISCLOSURE STATEMENT (IDS)<br>FILED                 |      |  |    |
| 10   | 07/05/2001 | INFORMATION DISCLOSURE STATEMENT (IDS)<br>FILED                 |      |  |    |
| 9    | 08/20/2001 | CASE DOCKETED TO EXAMINER IN GAU                                |      |  |    |
| 8    | 08/03/2001 | APPLICATION DISPATCHED FROM OIPE                                |      |  |    |
| 7    | 04/12/2001 | APPLICATION IS NOW COMPLETE                                     |      |  |    |
| 6    | 07/23/2001 | CORRESPONDENCE ADDRESS CHANGE                                   |      |  |    |
| 5    | 04/12/2001 | NOTICE MAILED--APPLICATION INCOMPLETE--<br>FILING DATE ASSIGNED |      |  |    |
| 4    | 04/12/2001 | CORRESPONDENCE ADDRESS CHANGE                                   |      |  |    |
| 3    | 04/11/2001 | CORRESPONDENCE ADDRESS CHANGE                                   |      |  |    |
| 2    | 01/19/2001 | IFW SCAN & PACR AUTO SECURITY REVIEW                            |      |  |    |
| 1    | 12/29/2000 | INITIAL EXAM TEAM NN  |      |  |    |

Search Another: Application#

Search

## **EXPLANATION OF PTA CALCULATION**

## **EXPLANATION OF PTE CALCULATION**

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

Back to [OASIS](#) | Home page